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Attorney for Defendant,
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DONNA GARCIA,

Plaintiff,

vs.

RESURGENT CAPITAL SERVICES, L.P.,
LVNV FUNDING, LLC, THE BRACHFELD
LAW GROUP, P.C. a.k.a BRACHFELD &
ASSOCIATES, P.C., and DOES 1-10,

Defendant

) Case No.: CV11-01253

) **ADMINISTRATIVE MOTION TO**
) **QUASH SUBPOENA SERVED ON**
) **JEFFREY HARRIS AND LIMIT THE**
) **SUBPEONA SERVED UPON ERICA**
) **BRACHFELD**

I. INTRODUCTION

In the course of discovery Plaintiff sought net worth information on Brachfeld Law Group and after hearings with Judge Zimmerman, Brachfeld produced a complete tax return for 2010 demonstrating its' net worth. Erica Brachfeld will also be present at trial to testify on any questions regarding the net worth of Brachfeld. Plaintiff has gone further and now seeks to compel the

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1 attendance of Brachfelds' accountant and seeks confidential information from both
2 the accountant and Erica Brachfeld- third parties by way of subpoena.

3 Because Plaintiff has no evidence of malicious conduct, much less
4 intentional conduct, and because the Court has already addressed the issues of the
5 confidentiality of these records, the subpoena to the account should be quashed as
6 it is redundant of the testimony that can be provided of Erica Brachfeld and the
7 document demands to Erica Brachfeld should be stricken because Plaintiff already
8 has the 2010 tax return and Erica Brachfeld can testify on any questions of net
9 worth.

10 11 **II. EVIDENCE OF MALICE**

12 There is absolutely no evidence to suggest any malice by Brachfeld that
13 would lead to an award of punitive damages. Plaintiffs own records, and the
14 Courts ruling on the motion for summary judgment make this clear (Plaintiff
15 cannot seek any damages or remedy base upon conduct occurring in 2006 & 2007).
16 Plaintiffs claims are limited to what happened between December, 2010 and
17 February, 2011, to wit, Brachfeld called Plaintiff between 20 & 50 times, Plaintiff
18 hung up on each call until the last call when she spoke with a Brachfeld
19 representative and the calls stopped. Brachfeld does not dispute receipt of a cease
20 and desist letter in 2006 and as such has offered to stipulate to that issue thereby
21 eliminating the need for any liability evidence at trial, but Plaintiff expressed no
22 interest in such stipulation and in fact has identified almost 80 exhibits that all
23 relate to the time frame specifically excluded from this matter by order of this
24 court (MSJ ruling at Page 7, Lines 3-5). As such the only real issue for this trial is
25 did those calls cause harm, could Plaintiff have prevented that harm by simply
26 speaking with the caller and finally, does the bona fide error defense apply to those
27 calls because Brachfeld has extensive policies and procedures that worked in this
28 case, but were not in effect in 2006 when the letter was received. There are no
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1 other factual allegations that come in to evidence, and as such, the subpoenas are
 2 excessive and seek privileged information.

3 4 **III. SUBPOENA & DOCUMENTS SOUGHT**

5 The subpoenas seek to force the Brachfeld third party accountant to travel
 6 from Santa Barbara to San Francisco for trial, when the same information can be
 7 gathered from Erica Brachfeld who will be present. The subpoenas also seek to
 8 have both produce confidential and private financial material even though Erica
 9 Brachfeld can testify to those facts and the Tax return demonstrating net worth
 10 have already been provided to Palintiff.

11 Specifically the subpoenas seek:

- 12 1. 2010 & 2011 tax returns including all schedules.
- 13 2. All documents used to prepare the tax returns (which would include
 14 confidential employee compensation)
- 15 3. Financial statements (which would include confidential and attorney
 16 client privileged forecasts and evaluations)
- 17 4. Tax returns for the past three years (redundant of number 1 and
 18 previously denied by Judge Zimmerman)
- 19 5. Profit and loss statements for each of the preceding 12 quarters.
- 20 6. Financial statements for the past three years.

21 These subpoena requests are redundant and seek confidential information
 22 that can be presented to the jury, if warranted, through less intrusive sources, and
 23 sufficient net worth data has already been given to the Plaintiff following extensive
 24 meet and confers and orders by Judge Zimmerman.

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2 **IV. FRCP LIMITS**

3 FRCP 45 provides that (c) (3) (A) *When Required*. On timely motion, the
4 issuing court must quash or modify a subpoena that:

5 (iii) requires disclosure of privileged or other protected matter, if no
6 exception or waiver applies; or

7 (iv) subjects a person to undue burden.
8

9 **V. CONCLUSION**

10 There is no evidence to support any claim for punitive damages, and even if
11 there is something produced, Plaintiff has sufficient information already making
12 the subpoenas unduly burdensome because they have the tax returns previously
13 ordered to be produced and will have Erica Brachfeld present to testify on the
14 issue.
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16 Date: May 1, 2012

Respectfully Submitted,

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18 By: /s/ Jonathan W. Birdt
Jonathan W. Birdt, Esq. (SBN. 183908)
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